In the High Court of Judicature at Madras

Dated:06.07.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice V. DHANAPALAN

Habeas Corpus Petition No.523 of 2006

Gunuru Eruku Naidu .. Petitioner

vs.

1. State rep. by
   Inspector of Police
   E3 Teynampet Police Station
   Teynampet, Chennai 18.

2. G.V.V.S.N. Murthy .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr. S. Ilamparithi

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor for R1

ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner by name Gunuru Eruku Naidu, has filed this petition seeking direction to the respondents to cause the production of the body of detenu minor child Master G. Udaya Krishna Mauriya, aged about 3 ½ years before this Court and set him at liberty forthwith to enable him to have the custody of his minor son.

2. In the affidavit filed in support of the above petition it is stated that the petitioner is working as a Software Engineer in GIBS Company. The detenu Master Udaya Krishna Mauriya is his only son, aged about 3 ½ years. After giving birth to his son, his first wife died due to cancer. Thereafter, he got married with another girl and his son has been under their custody till the date when the second respondent kidnapped him. The second respondent is his elder brother, who is working as Deputy Mandal Revenue

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Officer at Rajamundry (Rural), Andhra Pradesh. After his second marriage, the second respondent and his parents and other relatives developed ill-feeling against him and the second wife. On 13.05.2006, the second respondent and another brother G.V.V. Rameshwara Rao came to his residence and forcibly took his minor son from his lawful custody. Immediately, he went to Teynampet police station and lodged a complaint against his brother and others for kidnapping his minor son, since the first respondent police did not take effective steps to rescue his child, he and his wife went to Commissioner of Police, Chennai 8 and made a complaint, which was forwarded to the Deputy Commissioner of Police, Mylapore, Chennai 4 for appropriate action. In turn, the Deputy Commissioner, forwarded his compliant for investigation to the Inspector of Police, E3 Teynampet Police Station. It is further stated that he being a father of the minor child and lawful guardian, the action of the second respondent and others is punishable under Section 363 of Indian Penal Code and the Officers, who received his compliant have not taken effective steps, he filed the present petition under Article 226 of the Constitution of India.

3. Pursuant to the notice ordered by this Court, the second respondent, brother of the petitioner has filed a counter affidavit, wherein he denied the allegation regarding kidnapping. However, it is specifically stated by him that with the consent of the petitioner he took the child from Rajahmundry on 27.02.2006 for keeping with him for few days. Thereafter, the second respondent along with his mother went to Chennai and took the child back to Rajmundry in the ordinary course from the residence of the petitioner at Ganesapuram 4th Street, Teynampet, Chennai on 13.05.2006 with his full knowledge and consent. After the death of the first wife on 29.01.2004, the petitioner married another girl on 23.12.2005 at Annavaram. It is further stated that on the demise of the first wife of the petitioner, by mutual arrangement among the petitioner, their parents, elder brother and his wife and the second respondent and his wife, the detenu Udhaya Krishna Mouriya has been brought up by him (R.2) in the interest and welfare of minor, since he is childless and his wife cannot conceive. Thereafter, a religious function was arranged, viz., "Sweegharam" according to their custom and tradition was performed, minor Udhaya Krishna Mourya was given adoption with the chanting of Mantras by a Pundit on 28.08.2005, in the presence of the close family members and friends. Based on the compliant of the petitioner, when the police enquired, he explained to them as what actually took place and the details regarding adoption, execution of

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adoption deed, etc., The adoption deed was also sent to the Inspector of Police, E3 Teynampet Police Station through his Advocate, Chennai. The petitioner is not the lawful natural guardian of the detenu, who has since been duly adopted by him both by necessary religious ceremony on 22.08.2005 and a registered adoption deed dated 27.02.2006. Therefore, there is no question of kidnapping on his part attracting an offence under Section 363 IPC. With these averments, he prayed for dismissal of the habeas corpus petition.

4. In the light of the factual details, we heard the learned counsel for the petitioner as well as the contesting second respondent.

5. Even at the outset this Court expressed to the counsel for petitioner that in view of the claim made in the form of an affidavit and the specific stand taken by the second respondent in the form of counter affidavit supported by document, such as, adoption deed dated 27.02.2006, we expressed that the issue in question cannot be gone by this Court exercising jurisdiction under Article 226 of the Constitution of India. However, the learned counsel for the petitioner by drawing our attention to the following decisions, viz.,

(i) AIR 1964 SC 136 (A. Raghavamma and another vs. A. Chenchamma and another;
(ii) AIR 1982 SC 792 (Veena Kapoor vs. Varinder Kumar; and
(iii) 1959 SCR 597 (Gohar Begam vs. Suggi @ Nazma Begam,
contended that this Court has ample jurisdiction to order custody in respect of minor son, who is the detenu in this case.

6. We have gone through all the above decisions. Absolutely, there is no dispute with regard to the proposition laid down in those decisions. It is not a mere case of kidnapping as alleged by the petitioner. We have already referred to the specific stand taken by the second respondent in his counter affidavit and he also produced English translated copy of the adoption deed dated 27.02.2006. A perusal of the same shows that the document has been duly registered before the authority concerned. It also shows that the petitioner is a party to the document. In the light of same, we are of the considered view that the custody or entitlement of the minor child/detenu, particularly in the light of the specific stand taken by the second respondent cannot be gone into in this petition. It is made clear that we are not under-mining the right / entitlement of the petitioner with regard to his son. However, in view of the specific stand

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taken by the second respondent, it is for the parties to approach the appropriate Civil Court to vindicate their grievance.

With the above observation, this petition is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Inspector of Police
   E3 Teynampet Police Station
   Teynampet, Chennai 18.

2. The Public Prosecutor, High Court
madras

+ one cc to Mr. C.R. Chandrasekaran, Advocate sr no. 29242
+ 2 cc to Mr. S. Ilamparuthi, Advocate sr no. 28934

VC(Co)
NM(13.07.2006)

H.C.P.No.523 of 2006

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